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Boardroom Culture: An argument for compassionate leadership

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Abstract

In this paper I present an argument for introducing compassion into the boardrooms of large corporations. A series of corporate scandals and failures have led the UK's government to investigate what has been going wrong in some large corporations. These investigations have identified destructive corporate cultures emanating from greedy and self-serving leaders in boardrooms. Problems in the economic and corporate system in which lack of trust is paramount point towards a need for change. Our economic landscape has also shifted from an industrial economy to a knowledge economy bringing about changes from industrial models and economies of scale towards a global, digital and more creative and changing economy that focuses on continuing innovation. The old ways of running a company are no longer appropriate and we require different skills and characteristics in our CEOs. Increasingly, it is becoming necessary to adopt a more compassionate way of running businesses. CEOs need to be more emotionally and socially intelligent. Compassion is a potentially progressive way forward in the world of business. It is already recognised in the medical world – the NHS has an embedded culture of compassion. Corporate actors might also learn from feminist ideals of caring and compassion that could provide direction for developing compassionate leadership models. Some progressive corporate leaders have shown the potential for successful alternatives. Already in law there is a recognised role for compassion in numerous fields which may signal some new approaches to be adopted in the company law and corporate governance context.

Introduction

What does it take to lead a company successfully? Unfortunately, in the UK we regularly learn hard lessons about how *not* to run a company. The recent Parliamentary Report on the collapse of Carillion plc highlights a 'rotten corporate culture' in a company which held on to a business model of an 'unsustainable dash for cash' and 'became increasingly reckless in the pursuit of growth' with 'scant regard for long-term sustainability or the impact on employees, pensioners and suppliers'.¹ The boardroom came under critical scrutiny in the report and was

*I would like to thank the Alexander von Humboldt Foundation, the Deakin Law School (Australia) and the School of Law (Leeds University) for the financial support that made this 2018 ICGL (<http://2018-leeds.icgl.org.au/>) possible. I also would like to thank the participants in this 2018 ICGL Forum for the interesting deliberations at the Forum and my colleagues in the University of Bristol Law School for comments on earlier versions of this paper.

¹ Business, Energy and Industrial Strategy and Work and Pensions Committees, *Carillion*, Second Joint Report from the Business, Energy and Industrial Strategy and Work and Pensions Committees of Session 2017–19 HC 769, 16 May 2018, at 87.

described as having ‘built a culture of ever-growing reward’ (for themselves) behind the façade of an ever-growing company and that they had ‘focused on their personal profit and success.’² The report was clear in its conclusion that the board directors caused the destruction through their failure of leadership.³

The ruthless, profit-oriented approach is increasingly regarded as blameworthy for numerous world problems, from climate change and environmental damage to human rights abuses and worker exploitation globally. The Financial Reporting Council has considered the problems of boardroom culture and the Corporate Governance Code highlights that the boardroom should set the ‘tone from the top’.⁴ The concept of shareholder wealth maximisation as the central objective of our corporations is increasingly coming under question and as we seek new economic paradigms it might be the right time to look at who lead our major corporations and what skills and characteristics they might need to lead companies successfully as this millennium progresses. In this paper I suggest that a more compassionate boardroom culture is necessary.

New ways of approaching business are being explored in the organisation and management literature and compassion has been identified as a positive aspect of the new ‘conscious’ or ‘responsible’ capitalism. Already, distinctions are being made between ruthless bosses and compassionate or empathic bosses. In the UK, compassion lies at the heart of the culture of the NHS and the nursing profession and these provide examples from which large corporations might learn. They might also be guided by the feminist literature on the ethic of care. Law, as an institution, also recognises the validity of compassion, as does human rights. Given the potential for compassion in the broader legal and human rights setting how might it be introduced into the corporate arena?

The paper is structured as follows: Part 1 explores some recent corporate scandals and failures and provides an account of the poor leadership styles that might have led to those corporate downfalls. Part 1 also suggests that some impacts of corporate activity justify a case for compassion. Part 2 highlights the relevance of culture and identifies what might be deemed desirable culture as well as observing that there is a movement for change in our economic approaches already under way. Part 3 explores a definition of compassion and makes reference to the feminist ethic of care and the example of the NHS as potential guidance for a way forward in the corporate context. Part 4 identifies some progressive corporate leaders who display hints of compassionate leadership. Part 5 notes that in law the concept of compassion has already gained recognition and suggests how these might be developed in the company law and corporate governance context. The paper concludes by supporting the features of servant leadership identified by Reynolds⁵ as goals for boardroom leaders: practicing stewardship, listening, empathising, healing, exercising commitment to the growth of people, and building community.

² Ibid., at 47.

³ Ibid., at 47.

⁴ Financial Reporting Council, *Corporate Culture and the Role of Boards*, July 2016.

⁵ Kae Reynolds, *Servant-Leadership – A Feminist Perspective*, 10:6 International Journal of Servant Leadership, 35-63, at 49 (2015).

Part 1 (a) Corporate scandals during 2000s: Key features

In the past few years the UK has witnessed a number of corporate collapses or scandals in which the companies have been run on models of greed and self-interest. Carillion's collapse prompted the most recent parliamentary report but in the past couple of years also the House of Commons reported on the collapse of BHS⁶, which left 11,000 employees without jobs and 20,000 current and former BHS employees with pension entitlement reductions of up to 77%, requiring assistance from the government's Pension Protection Fund.⁷ The House of Commons also reported on Sports Direct⁸ which is a profitable, though declining, business but which operates with a business model that 'involves treating workers as commodities rather than as human beings with rights, responsibilities and aspirations'.⁹ Sports Direct was described by witnesses as 'a gulag, as Victorian, as a workhouse, not a warehouse'.¹⁰ The workers there are 'treated without dignity or respect'.¹¹ They 'were not being paid the national minimum wage, and were being penalised for matters such as taking a short break to drink water and for taking time off work when ill'.¹² All of these stories highlight the negative outcomes of a corporate culture that makes possible an emphasis on pursuing short-term goals, greed, and growth and risk taking, with resulting lack of trust, exploitation and sometimes, but not always, corporate failure. In the words of Cohen, 'the most basic elements of the corporate culture include profit for individuals gained through hierarchical control and disconnection of corporate participants from one another'.¹³ Indeed, in the case of Sports Direct the disconnect between Mike Ashley, the Deputy Executive Chairman, and his workers was made plain in the parliamentary report which noted that he 'seemed shocked'¹⁴ at the testimonials of workers when they were read out to him. The House of Commons Committee stated that it 'seems incredible to us that the owner, whose name is inextricably linked with the brand of Sports Direct, and who visits the warehouse at least once a week, would have no idea of the working conditions and practices there, when they have been highlighted in the media and in Parliament since 2015'.¹⁵

(b) Poor corporate leadership styles

⁶ Work and Pensions and Business, Innovation and Skills Committees, *BHS*, First Report of the Work and Pensions Committee and Fourth Report of the Business, Innovation and Skills Committee of Session 2016–17, HC 54, 25 July 2016.

⁷ *Ibid*, at 4.

⁸ Business, Innovation and Skills Committee, *Employment Practices at Sports Direct*, Third Report of Session 2016–17, HC 219, 22 July 2016.

⁹ *Ibid*, at 27.

¹⁰ *Ibid*, at 8.

¹¹ *Ibid.*, at 26.

¹² *Ibid*, at 3.

¹³ R. Cohen, *Feminist Thought and Corporate Law: It's Time to Find Our Way Up From the Bottom (Line)* 2:1 *Journal of Gender and the Law* 1, at 27, (1994).

¹⁴ HC 219, above note 8, at 8.

¹⁵ *Ibid*, at 3.

The style of leadership of these corporations is a key to understanding their failures. They were being run by self-serving, uncaring leaders. According to the FT, Mike Ashley, 'facing accusations his company was underpaying staff last year, was snapped flashing wads of £50 notes, a denomination that minimum-waged workers rarely encounter.'¹⁶

In BHS, Philip Green, was described by the Business Innovation and Skills Committee as 'bullying' and 'brusque'.¹⁷ The Work and Pensions Committee published a report highlighting the greed of the Green family and said that the demise of BHS highlighted the 'unacceptable face of capitalism'.¹⁸

Rt Hon Frank Field MP, Chair of the Work and Pensions Committee, said:

"One person, and one person alone, is really responsible for the BHS disaster. While Sir Philip Green signposted blame to every known player, the final responsibility for up to 11,000 job losses and a gigantic pension fund hole is his. His reputation as the king of retail lies in the ruins of BHS. His family took out of BHS and Arcadia a fortune beyond the dreams of avarice, and he's still to make good his boast of 'fixing' the pension fund. What kind of man is it who can count his fortune in billions but does not know what decent behaviour is?"

Aventr is a software company¹⁹ specialising in providing software and analytics designed to help companies to increase employee engagement and improve communications between managers and employees. In 2017, Aventr identified what it considered to be the best and worst leaders.²⁰ Its three leaders with the most toxic company cultures were: Travis Kalanick at Uber, Eddie Lampert at Sears, and Bernardo Hees at Kraft Heinz. According to Aventr, Uber's culture sends the message that employees should work hard, just because they should work hard. If, for some reason, they don't appear to be working hard enough, then they need to be pushed to work harder. At the company there is also a culture of partying, sexism, and widespread unprofessionalism. In Sears, Eddie Lampert is criticised by Aventr for having used a 'shareholders first' approach and ignoring what his customers and employees were saying. Instead of investing in capital improvements such as brand revitalisation, he used Sears' available cash to buy back shares. This increased the price of the shares for the short term, serving only the interests of the shareholders (and himself). The contemptuous treatment of the workers at Sears was demonstrated when company executives visited stores and told workers they were no longer allowed to discuss any issues about where they worked. Upper management also allegedly stopped seeking employee buy-in after Lampert took over and began dictating how the stores should be run according to "corporate standards." Hees's entry into Aventr's top three bad leaders as CEO seemingly came with mass layoffs, extreme

¹⁶ J. Guthrie, *Mike Ashley's Tragic Flaw is Ineptitude, Not Booze* Financial Times, 7 July 2017.

¹⁷ 06/15/16--07:39: Ex-BHS owner Sir Philip Green attacks 'envy and jealousy' but insists: 'I have done nothing wrong' available at http://select2141.rssing.com/chan-66023181/all_p1.html

¹⁸ Work and Pensions and Business, Innovation and Skills Committees *BHS First Report of the Work and Pensions Committee and Fourth Report of the Business, Innovation and Skills Committee of Session 2016–17*, HC 54, 25 July 2016

¹⁹ <https://www.aventr.com/>

²⁰ J. Marshall, *The 6 Best and Worst CEOs of 2017 and What You Can Learn from Them*, 7 September 2017, <https://www.aventr.com/blog/the-6-best-and-worse-ceos-of-2017-and-what-you-can-learn-from-them>

cost-cutting measures, and unwelcome changes to the culture of Kraft Heinz. According to Avenir, changes included ‘insane’ policies such as prohibiting employees from bringing rival food products to work or having more than two personal items on their desks (to reduce distractions). Heinz became one of the worst ranked companies to work for (according to Glassdoor), and Bernardo Hees himself acquired a 24% approval rating.

Whilst these CEO’s could claim success in terms of growth and profits, that success is unlikely to be sustained over a long period with such leadership styles. Indeed, Uber’s fortunes have been very mixed. In 2017 for instance, alongside sales worth \$7.5 billion, the company also made losses of \$4.5 billion.²¹ The story is no happier for Sears where, despite more than a decade of strategic restructuring, large investments in its membership program and digital capabilities, closing hundreds of its worst locations, the company expected, in November 2017, to report comparable store sales declines of 15.3% for the quarter and a loss of at least \$525 million.²² Kraft Heinz also saw its share price fall from \$90 to \$60 during the past year and the company has been criticised for ‘creating an intense, high performance culture that scares off recruits and creates high turnover’.²³

Not only does Avenir recognise the faults of some CEOs but, indeed, journalists have also long pointed out their flaws. With regard to Philip Green, in an article for the Financial Times²⁴, Hill and Felsted state that “Green’s style is best described as argumentative, to the point of confrontational. His anger is often turned on journalists who criticise him, or advisers who refuse to see his point of view. One person who worked with him recalls seeing bankers driven from his office in tears. People are “petrified” and “intimidated” by Green, says another. Few of those contacted for this article wished to criticise him on the record.²⁵ Similarly, in his book *Spills and Spin*, that gives an account of the events occurring in BP before its disastrous 2010 oil spill in the Gulf of Mexico, Tom Bergin notes that the fundamental flaw at BP was ‘a structure that encouraged managers to put short-term financial goals ahead of the long-term health of the business and its employees.’²⁶ In the book he describes Lord Browne, the CEO between 1995 and 2007, as having a ‘sheer detachment from his fellow man’ and ‘not given to unnecessary unkindness, yet he possessed an apathy towards others that made him, while easy to admire, difficult to develop affection for. ... ‘Remote’ and ‘aloof’ ... Friends and colleagues I spoke to found him scarcely warmer.’²⁷

²¹ E. Newcomer, *Uber Quarterly Sales Rose 61% to \$2 Billion Amid Heavy Loss* Bloomberg, 14 February 2018, <https://www.bloomberg.com/news/articles/2018-02-13/uber-sales-reach-7-5-billion-in-2017-despite-persistent-turmoil>

²² S. Dennis, *Sears: Dead Brand Walking* Forbes, 14 November 2017, at <https://www.forbes.com/sites/stevendennis/2017/11/14/sears-dead-brand-walking/#24cfbff1375c>

²³ T.F., Lindeman, *Kraft Heinz shareholders hanging in there, hoping for something big soon*, Pittsburgh Post-Gazette, 23 April 2018, at <http://www.post-gazette.com/business/money/2018/04/23/Kraft-Heinz-shareholders-hanging-in-there-hoping-for-something-big-soon-Hees-3G-Capital/stories/201804230132>

²⁴ Andrew Hill and Andrea Felsted, Interview Philip Green, *Financial Times*, 18 September 2015.

²⁵ Ibid. A similar account was written long before BHS’s collapse. In the preface to their book *Top Man*, Stewart Lansley and Andy Forrester give an account of people’s reluctance to talk about Philip Green or to fall out with him: *Top Man: How Philip Green Built His High Street Empire* (Aurum, 2006).

²⁶ T. Bergin, *Spills and Spin: The Inside Story of BP* 128 (Random House, 2011).

²⁷ Ibid, at 6-7.

Harsh portrayals are also offered for Winterkorn, the CEO of Volkswagen: 'a demanding boss who didn't like failure'; a management style under Winterkorn that fostered a climate of fear, an authoritarianism that went unchecked partly due to a company structure unique in the German motor industry.' 'There was always a distance, a fear and a respect... If he would come and visit or you had to go to him, your pulse would go up,' the former VW executive told Reuters. 'If you presented bad news, those were the moments that it could become quite unpleasant and loud and quite demeaning.'²⁸

What stands out about these different CEO descriptions is that the less successful are aloof, treat their employees with contempt or as nothing more than servants without any voice and are frequently greedy and bad tempered. In Carillion's case they were described as 'self-pitying.'²⁹

It is arguably the corporate governance system in place that has made possible these failures. In the Sports Direct case, the House of Commons noted that corporate governance 'goes to the heart of the issues'.³⁰ Lynn Stout, argues that the problems at BP leading to its disastrous Deepwater Horizon Spill arise from the pursuit of shareholder wealth, a dominant theme in corporate governance,³¹ as shareholder value encourages a profit orientation, cost cutting and short-term thinking. The corporation has become, as described by Dobson and White, 'an abstract engine' that facilitates behaviour 'conceptualized entirely within the rubric of pecuniary value maximisation'.³² They call it a neoliberal, individualistic model, appearing as a hierarchical, profit-oriented capitalist patriarchy. Neron sums the picture up as follows: that 'the kind of relations involved transform the already tricky command hierarchies into even more problematic ones, with unequal relations, characterized by asymmetries of power, class differentiation, arrogance and disrespect'.³³

Considering the importance of the organisational environment in which these players act, regulators provide for several internal and external governance mechanisms to reduce the risk of corporate misbehaviour or to minimise agency problems³⁴ but the corporate governance system is made of rules that are soft and easily averted. Thus, the Volkswagen scandal, from a corporate governance perspective, points to ambitious company production targets for the US market and time and budget constraints imposed on employees to reach those targets³⁵ and encouraged those employees to use illegal methods in operational terms

²⁸ Andrew Cremer and Tom Bergin, *Fear and Respect: VW's culture under Winterkorn* Business News, 10 October 2015, at <https://www.reuters.com/article/us-volkswagen-emissions-culture/fear-and-respect-vws-culture-under-winterkorn-idUSKCN0S40MT20151010>

²⁹ Business, Energy and Industrial Strategy and Work and Pensions Committees, *Carillion*, Second Joint report from the Business, Energy and Industrial Strategy and Work and Pensions Committees of Session 2017–19 HC 769, 16 May 2018, at 3.

³⁰ HC 219, at 24.

³¹ L. Stout, *The Shareholder Value Myth: How Putting Shareholders First Harms Investors, Corporations and the Public* (2012, Berrett-Koehler, San-Francisco).

³² John Dobson and Judith White. *Toward the feminine firm: An extension to Thomas White* 5.03 Business Ethics Quarterly 463-478, at 467 (1995).

³³ Pierre-Yves Neron *Egalitarianism and Executive Pay: A Relational Argument* 132 J Bus Ethics 171-184, at 172 (2015).

³⁴ R. Crête, *The Volkswagen Scandal from the Viewpoint of Corporate Governance*, 1 EJRR 25, at 27 (2016).

³⁵ *Ibid*, at 25.

to achieve the company's objective. This misconduct could not be detected because of deficiencies in the monitoring and control mechanisms, and especially in the compliance system established by the company to ensure that legal requirements were respected. Some observers also pointed to the excessive centralisation of decision-making powers within VW's senior management, and an organisational culture that acted as a brake on internal communications and discouraged mid-level managers from passing on bad news

Crête's account suggests that a particular culture has been able to dominate because it exists within a weak regulatory framework. Minimising agency problems has therefore become secondary to a dominant profit seeking culture. In VW, consequently, the culture and structure overrode the checks and balances system and the corporate governance and legal requirements were not strong enough to prevent their negative influence. As Crête summarises, in terms of corporate governance, an analysis of misbehaviour can highlight problems connected with the culture, values, policies and strategies promoted by a company's management that have a negative influence on the behaviour of senior managers and employees.³⁶

(c) A case for compassion in the corporate context

In light of these corporate scandals, our corporate governance system is facing increasing levels of criticism. Such failures have impacts beyond the losses of the company and its shareholders. Employees losing their jobs, and very often their pensions, has an impact on employment rates and tax. Suppliers often find that their businesses struggle, and services and customer choice are diminished as a result of corporate failures. Not only are the impacts felt in corporate failure. Many organisations are also undergoing cost savings. Very often, it is the workforce inside the corporation or within its supply chain, or the customers/clients who experience the brunt of the cost saving measures and more onerous workplace requirements.³⁷

The social impacts of ruthless business culture are clearly visible. In the UK and globally there are growing income inequalities and corporations are contributing to such inequalities. Not least, executive pay levels are incomparable with pay levels at the lower end of the corporate scale.³⁸ These wealth and income differences in a corporate hierarchy contribute to a less beneficent culture. Desai *et al*, for example, argue that higher income inequality between executives and ordinary workers results in executives perceiving themselves as being all-powerful and this perception of power 'causes top managers to objectify lower level employees and view them as mere instruments to be used and discarded'.³⁹ A laboratory study conducted by Desai *et al* exposed an exaggeration in the power perceived by managers

³⁶ Ibid., at 27.

³⁷ See eg Shahzad et al noting the problems that arise for employees as a result of company downsizing: K. Shahzad and A.R. Muller *An integrative conceptualization of organizational compassion and organizational justice: a sensemaking perspective* 25(2) *Business Ethics: A European Review*, 144-158 (2016).

³⁸ C. Villiers, *Executive Pay: A socially-oriented distributive justice framework* 37:5 *Company Lawyer*, 139-154 (2016).

³⁹ S. Desai, Arthur Brief, and J. George, *When Executives Rake in Millions: Meanness in Organizations*, Paper presented at the 23rd Annual International Association of Conflict Management Conference, Boston, Massachusetts, 2, (June 24-27, 2010).

with relatively higher income compared to their employees, possibly because the pay provides a symbolic and competitive distinction between different ranks and levels of power in an organisation. As workers regard the CEO as powerful, it becomes a self-fulfilling phenomenon. Such power can lead to selfish, corrupt and mean behaviour toward lower level employees. Desai *et al* observe mean behaviours in Wal-Mart for 'violating wage laws, failing to provide adequate health care to employees, exploiting workers, taking an anti-union stance, and violating human rights in foreign countries'.⁴⁰ Desai *et al* explain that power can change people's cognitions, motivations and behaviours and the experience of power results in viewing instrumentally those with less power.⁴¹

These types of power structure feed into exploitative practices such as are seen in the gig economy⁴², and which are also widespread in global supply chains with more intense power hierarchies within the supply chain, have become notorious.⁴³ Corporate land grabs⁴⁴, modern slavery⁴⁵, exploitation of small farmers⁴⁶ and help notes in clothes labels⁴⁷ are now widely known phenomena. Human rights abuses in which multinational companies have been complicit are also well-known.⁴⁸ Environmental degradation leading to current and future animal and human suffering is an increasing threat also.⁴⁹

In the UK stress levels and mental health issues have increased, the prevalence of common mental disorders having increased by around one-fifth between 2003 and 2014, showing an estimated 1 in 6 people experiencing such a disorder, and self-harm and suicidal thoughts having increased further.⁵⁰ The main factors causing work-related stress, depression, and anxiety include workload pressures, tight deadlines, too much responsibility and lack of

⁴⁰ Ibid, at 7-11.

⁴¹ Ibid, at 7-11.

⁴² K. S. Rahman, *The Shape of Things to Come: The On-Demand Economy and the Normative Stakes of Regulating 21st-Century Capitalism* 7(4) European Journal of Risk Regulation, 652-663 (2016); Work and Pensions and Business, Energy and Industrial Strategy Committees, *A framework for modern employment* Second Report of the Work and Pensions Committee and First Report of the Business, Energy and Industrial Strategy Committee of Session 2017-19, HC 352, 20 November 2017.

⁴³ Benjamin Selwyn *The role of law in global value chains: a research manifesto* 4(1) London Review of International Law, 57-79 (2016); Benjamin Selwyn *Commodity chains, creative destruction and global inequality: a class analysis* 15(2) Journal of Economic Geography, 253-274 (2015).

⁴⁴ See eg: B. White, S. M. Borras Jr, R. Hall, I. Scoones, and W. Wolford, *The new enclosures: critical perspectives on corporate land deals* 39(3-4) The Journal of Peasant Studies, 619-647 (2012).

⁴⁵ See eg Alliance 87, Global Estimates 2017, *Modern Slavery, Global Estimates*, at <https://www.alliance87.org/2017ge/#!section=0>

⁴⁶ A. Broughton, and E. Garcia, *Sustainable Agriculture versus Corporate Greed* (Resistance Books, 2017).

⁴⁷ J. Zenker, *Made in Misery: Mandating Supply Chain Labor Compliance* 51 Vand. J. Transnat'l L., 297 (2018); Susanna Rustin, 'This cry for help on a Primark Label can't be ignored' *The Guardian*, 25 June 2014; E. Wulforth, 'Pleas for help sewn into Zara clothes by unpaid workers 'just the tip of the iceberg', warns human rights expert' *The Independent*, 15 November 2017.

⁴⁸ See eg David Kinley, ed. *Human rights and corporations*. Routledge, 2017; see also Center for Constitutional Rights, *Corporate Human Rights Abuses* at <https://ccrjustice.org/home/what-we-do/issues/corporate-human-rights-abuses>

⁴⁹ Gunningham, Neil, *Corporate Environmental Responsibility* (Ashgate, 2009).

⁵⁰ S. McManus P. Bebbington, R. Jenkins T. Brugha, (eds) *Mental Health and Wellbeing in England: Adult Psychiatric Morbidity Survey 2014*, published in 2016 by NHS Digital, at <https://www.gov.uk/government/statistics/adult-psychiatric-morbidity-survey-mental-health-and-wellbeing-england-2014>

managerial support.⁵¹ The government has been criticised for providing mental health services with insufficient funding but it is also necessary to tackle the causes of this mental health crisis which include workplace demands and stress. Harvey *et al* identify a correlation between mental health and some specific features of the workplace. They see moderate level evidence from multiple prospective studies that high job demands, low job control, high effort–reward imbalance, low relational justice, low procedural justice, role stress, bullying and low social support in the workplace are associated with a greater risk of developing common mental health problems.⁵² These are management issues that require effective leadership to be resolved.

The above experiences indicate that change is required. Stress, depression, anxiety, suicidal thoughts, and self-harm are all forms of suffering that would justify more compassionate management and leadership strategies. However, there are a number of corporate governance features that stand in the way of introducing compassion into the corporate culture. First, the hierarchical structures of large corporations do not encourage or nurture connected leaders because they are placed at a distance from their workers and their customers. The faulty corporate governance was remarked on by the House of Commons Committee in the Sports Direct case, but these problematic structures worsen as the company grows in size and may be especially challenging in multinational corporations because of the geographical distance and the structural complexities involved. In addition, the male domination that still prevails in most boardrooms of the largest companies⁵³ may feed into a masculine, ‘gladiatorial’⁵⁴ culture that is competitive and individualistic rather than cooperative and relational. The short-termism that persists in the financial markets has become a standard way of measuring corporate performance, alongside the profit-oriented goals rather with little attention given to broader success criteria. Until now, attempts to address the problems have not been effective. For example, measures to increase transparency have not resolved such problems.⁵⁵ Nor have corporate governance and management trends such as CSR⁵⁶ or stakeholder welfare⁵⁷. Moreover, the fundamental

⁵¹ Health and Safety Executive, *Work-related Stress, Depression or Anxiety Statistics in Great Britain 2017*, at <http://www.hse.gov.uk/statistics/causdis/stress.pdf>

⁵² Samuel B. Harvey, et al, *Can work make you mentally ill? A systematic meta-review of work-related risk factors for common mental health problems* *Occup Environ Med* (2017): oemed-2016. See also ArticleS. Waters, M. Karanikolos, and M. McKee, *When work kills* 15(4) *Journal of Public Mental Health*, 229-234 (2016).

⁵³ The latest figures, 2017, show that the percentage of women on boards in the FTSE 100 companies is 27.7% and in the FTSE 250 companies the percentage is 22.8%. The number of female non-executives in the FTSE 100 is 33.3% but for executive directorships the figure remains low at 9.8% : see *Female FTSE Board report 2017* at <https://www.cranfield.ac.uk/som/expertise/changing-world-of-work/gender-and-leadership/female-ftse-index>

⁵⁴ M.A. O'Connor, *Women executives in gladiator corporate cultures: The behavioral dynamics of gender, ego, and power* 65 *Md. L. Rev.*, 465 (2006).

⁵⁵ See eg C. Villiers, *Limitations of Transparency in Global Supply Chains* (forthcoming, *Deakin Law Review*) and C. Villiers, *Sustainability and Disclosure in Global Supply Chains* (forthcoming in Sjøfjell, B and Bruner, C., eds, *Cambridge Handbook on Corporate Law and Corporate Governance and Sustainability* (CUP)).

⁵⁶ Andrée H. J. Nijhof, and Ronald J.M. Jeurissen. *The glass ceiling of corporate social responsibility: Consequences of a business case approach towards CSR* 30:11/12 *International Journal of Sociology and Social Policy* 618-631 (2010).

⁵⁷ E. Garriga, *Beyond stakeholder utility function: Stakeholder capability in the value creation process* 120(4) *Journal of Business Ethics*, 489-507 (2014).

principles of corporate law – limited liability and separate legal personality – have arguably presented barriers to more inclusive or responsible business actions.⁵⁸

Part 2 (a) FRC: culture as important to corporate governance

Crête highlights the role of the board in setting the corporate culture. Crête suggests that when analysing a corporate scandal from the viewpoint of its corporate governance, the question to be asked is whether the culture, values, priorities, strategies and monitoring and control mechanisms established by the company's management board and supervisory board – in other words "the tone at the top"-, created an environment that contributed to the emergence of misbehaviour.⁵⁹ Indeed, following the VW scandal, Armstrong, writing in the Financial Times, observes that poor, unaccountable corporate governance, and short-term incentives for executives, are pervasive.⁶⁰ He concludes that there was some 'corporate skulduggery' that 'someone got greedy' and that 'something went wrong with VW's culture such that immoral behaviour became acceptable'.⁶¹ Importantly, he remarks that 'culture is there and it matters'.⁶²

The FRC has also highlighted culture as an important element of corporate governance and of relevance to the role of boards. In the Foreword to the FRC's report on boardroom culture, *Corporate Culture and the Role of Boards*, in 2016, the FRC's Chairman, Sir Winfried Bischoff, highlights the need for 'a concerted effort to improve trust in the motivations and integrity of business'.⁶³ Defining culture in a corporate context as 'a combination of the values, attitudes and behaviours manifested by a company in its operations and relations with its stakeholders,' the FRC's Report states that 'leaders, in particular the chief executive, must embody the desired culture, embedding this at all levels and in every aspect of the business. Boards have a responsibility to act where leaders do not deliver.'⁶⁴ The FRC concluded that if accountability for owning, assessing and overseeing culture lies with the board, then accountability for driving culture lies primarily with the executive management team, starting with the chief executive. It is the chief executive that sets expectations and drives behaviour and change throughout the organisation.⁶⁵ According to the Report, 'cultural failures damage reputation and have a substantial impact on shareholder value'⁶⁶ and 'culture is an intrinsic part of how the business is managed and an output of how the business is run'.⁶⁷

⁵⁸ P. Ireland, *Limited liability, shareholder rights and the problem of corporate irresponsibility* 34(5) Cambridge Journal of Economics, 837-856 (2010); P. Ireland, and R.G Pillay, *Corporate social responsibility in a neoliberal age* in P. Utting and J Marques (eds) *Corporate social responsibility and regulatory governance* 77-104 (2010 Palgrave Macmillan, London).

⁵⁹ Crête, at 28.

⁶⁰ R. Armstrong, *The Volkswagen scandal shows that corporate culture matters*, Financial Times, 13 January 2017.

⁶¹ Ibid.

⁶² Ibid.

⁶³ Financial Reporting Council, *Corporate Culture and the Role of Boards* (July 2016).

⁶⁴ Ibid, at 6.

⁶⁵ Ibid, at 6.

⁶⁶ Ibid, at 8.

⁶⁷ Ibid., at 10.

The UK Corporate Governance Code ascribes to boards a responsibility for setting the company's values and standards (supporting principle A.1). The preface to the Code states:

'One of the key roles for the board includes establishing the culture, values and ethics of the company. It is important that the board sets the correct "tone from the top". The directors should lead by example and ensure that good standards of behaviour permeate throughout all levels of the organisation. This will help prevent misconduct, unethical practices and support the delivery of long-term success.

It is clear then, that culture is a feature that is relevant to corporate governance. It is embodied within the Corporate Governance Code as a key role for the board, falling within one of the Code's supporting principles. Whilst it remains soft law, the principle highlights a need for boards at least to take culture into account in setting good standards and behaving according to those standards. The Code sees the culture as relevant to avoiding the misconduct or unethical behaviour that have led to the demise of corporations such as BHS or Carillion. What, then, might contribute to the desired corporate culture?

(b) The desired culture, values and ethics and need for new economic paradigms

The FRC's Report signposts some aspects of the required corporate culture. The FRC emphasises that for boards, culture starts with their behaviour in the boardroom and that employees need to see that the leadership is held to account and to the same standards as the rest of the organisation.⁶⁸ It is about 'leading by example'.⁶⁹ 'The tone has to come from the CEO – he is responsible for the delivery globally of a culture that values high standards of conduct. It's about personal leadership and being very visible.'⁷⁰ The FRC observes that companies 'need to build and maintain successful relationships with a wide range of stakeholders in order to prosper. These relationships will be successful and enduring if they are based on respect, trust and mutual benefit.'⁷¹

The remarks from the FRC reflect the fact that the economic landscape is changing. As the neo-liberal dynamic is increasingly being questioned in the midst of corporate scandals and failures, academic and policy experts are searching for new economic paradigms.⁷² As new economic movements have begun to develop, the industrial economies we have been used to in the western hemisphere have come under pressure. Gerstein and Friedman, for example, note a shift from the industrial model and economies of scale as determining organisational rules, towards a global, digital and more creative and changing economy that focuses on continuing innovation. With this shift comes a need for adaptable, resilient and creative actors to enable companies to respond to the world's changes.⁷³ According to Gerstein and Friedman, today's conceptual age looks for skills that include creativity,

⁶⁸ Ibid, at 13.

⁶⁹ Ibid, at 13.

⁷⁰ Ibid, at 14.

⁷¹ Ibid at 8.

⁷² See eg Institute for New Economic Thinking at <https://www.ineteconomics.org/about/our-purpose>

⁷³ Miriam Gerstein and Hershey, H. Friedman, *A New Corporate Ethics and Leadership Paradigm for the Age of Creativity* 18:2 Journal of Accounting, Ethics and Public Policy 179-230 (2017).

empathy, happiness and meaning.⁷⁴ The old ways of running a company are not really commensurate with the emerging needs. Autocratic leadership is going to become a less effective mode of operation. CEOs need, instead, to be ‘farsighted, tolerant, humane and practical’.⁷⁵ Odgers Berndtson observes the importance of the millennial generation that is not particularly brand loyal and has constant access to technology. Millennials are more discerning and ready to question their leaders and to question authority. They appear to be more interested in values beyond just those of profit maximisation: ‘Survey after survey shows that millennials want to work for companies that place a premium on employee welfare, offer flexible scheduling and, above all, bestow a sense of purpose’.⁷⁶ This developing landscape leads commentators to suggest that ‘the highest performing leaders today are those who are self-aware – they are interested, are good listeners, seek feedback and are able to change behaviour. But crucially, they have emotional and social intelligence, and a well-developed sense of compassion for others. [U]p to 85% of the skills required by CEOs today are related to emotional intelligence, and the ability to put themselves in other people’s shoes.’⁷⁷

The ‘Conscious Capitalism’ movement seeks to put some of these new ways of economic thinking into practice. Whole Foods, for example, acknowledges lack of sustainability in business practice and urges leaders ‘to re-think why their organisations exist and acknowledge their companies’ roles in the interdependent global marketplace’.⁷⁸ To put this ‘re-thinking’ into practice arguably requires a high level of mindfulness on the part of leaders⁷⁹ and deep systemic change to organisational cultures.⁸⁰ Conscious capitalism rests upon four tenets: spiritually-evolved, self-effacing servant leaders; a conscious culture; stakeholder orientation; a higher purpose, one that transcends profit maximisation.

One approach that might enable board members and corporate managers, generally, to achieve the respect and trust required is to adopt a compassionate approach. A body of literature has grown which connects trust with compassionate leadership. For example, Seppala suggests that treating people with compassion increases social connection which, in turn, raises their levels of trust.⁸¹ Compassion is linked to other virtues such as humility, forgiveness, altruism and gratitude with the result that for those being led such as workers they will experience optimal human functioning, a sense of community and meaningfulness.⁸²

⁷⁴ Ibid.

⁷⁵ L. Tischler, *The CEO’s New Clothes* (19 December 2007), Fast Company.com

⁷⁶ J. Wortham, J. (2016, February 25). The new dream jobs. *New York Times*. Retrieved from http://www.nytimes.com/2016/02/28/magazine/the-new-dream-jobs.html?WT.mc_id=2016-MARCH-FB-HD-WINBACK_AUD_DEV-0301-0331&WT.mc_ev=click&ad-keywords=HDWINBACK

⁷⁷ Odgers Berndtson ‘Emotional intelligence and compassion key traits for modern CEOs’ (30 September 2014) www.odgersberndtson.com

⁷⁸ David A. Schwerin, *Conscious capitalism 3* (Routledge, 2012) .

⁷⁹ Ibid.

⁸⁰ W. Visser, *The Ages and Stages of CSR: Towards the Future with CSR 2.0*, 3 CSR International Paper Series, (Social Space 2011).

⁸¹ E. Seppala, T. Rossomando, T., and J. R. & Doty, *Social connection and compassion: Important predictors of health and well-being* 80(2) Social Research, 411-430 (2013).

⁸² Dirk van Dierendonck, and Kathleen Patterson *Compassionate love as a cornerstone of servant leadership: An integration of previous theorizing and research* 128(1) Journal of Business Ethics 119-131 (2015).

In turn this compassionate approach may result in positive outcomes for the corporation. According to Shahzad and Muller, the feelings of trust, belonging, and being cared for at work that result from organisational compassion lead to positive organisational outcomes such as increased commitment, lower turnover, enhanced performance, and social cohesion⁸³ Similarly, Cameron et al note that ‘when employees observe displays of virtuous behaviours among fellow employees for example, sharing, loyalty, advocacy, caring the results are enhanced liking, commitment, participation, trust, and collaboration, all of which contribute significantly to organisational performance’⁸⁴

Part 3 (a) Definition of compassion

Compassion might be defined as ‘the feeling that arises in witnessing another's suffering and that motivates a subsequent desire to help’.⁸⁵ According to Gilbert: ‘most approaches coalesce around the idea that compassion involves a sensitivity to suffering in self and others with a commitment to try to alleviate and prevent it.’⁸⁶ Compassion comes from the words suffering and togetherness.⁸⁷ It is in essence noticing and feeling another person’s suffering. There is a close relationship between one’s own suffering and self- oriented compassion, and compassion for others. Compassion includes empathy - a family of responses to another “that are more other-focused than self-focused, including feelings of sympathy, compassion, tenderness, and the like”.⁸⁸ Compassion includes ‘terms like “sympathy,” “pity,” and “empathic concern” - a family of compassion-related states that center upon a concern for ameliorating the suffering of another individual’.⁸⁹ An emotion like compassion serves as an internal motivation and reward for following cooperative norms. The implication is that individuals will seek lasting relationships with more agreeable, compassionate individuals because ‘this emotional trait predicts increased cooperative, trustworthy behavior and mutually beneficial exchanges among individuals not bound by kin relations’.⁹⁰

The psychological and organisational concept of compassion focuses on being attuned to and responsive to the suffering of others. According to Jennifer George, compassion ‘reflects making decisions and behaving in ways that reflect care and concern for others’.⁹¹ She adds

⁸³ K. Shahzad, and A. R. Muller *An integrative conceptualization of organizational compassion and organizational justice: a sensemaking perspective* 25(2) Business Ethics: A European Review, 144-158, at 144 (2016).

⁸⁴ K. S. Cameron, D. Bright, and A. Caza *Exploring the relationships between organizational virtuousness and performance* 47(6) American Behavioral Scientist, 766–790, at 772 (2004).

⁸⁵ J. L. Goetz, D. Keltner, and E. Simon-Thomas, *Compassion: An evolutionary analysis and empirical review* 136 Psychological Bulletin, 351–374, at 352 (2010).

⁸⁶ P. Gilbert, *The evolution and social dynamics of compassion* 9(6) Social and personality psychology compass, 239-254, at 241 (2015).

⁸⁷ J. Lilius, J. Kanov, J. E. Dutton, M. C. Worline, and S. Maitlis, *Compassion Revealed: What we know about compassion at work (and where we need to know more)* in K. Cameron and G. Spreitzer (eds). *The Handbook of Positive Organizational Scholarship*, (Oxford University Press. 2011).

⁸⁸ C. D. Batson, *The altruism question: Towards a social social-psychological answer*. (Hillsdale, NJ: Erlbaum; 1991).

⁸⁹ Goetz, Keltner and Simon-Thomas, 2010, above note 85, at 352.

⁹⁰ Ibid, at 356.

⁹¹ J. George, *Compassion and Capitalism: Implications for Organizational Studies* 40:1 Journal of Management 5-15, at 7 (2014).

that ‘compassion is exhibited in organisations when organisational members express care and concern for others and are motivated to alleviate suffering’.⁹² Compassion is oriented towards the other and nurtures emotional connection between an individual and their community, motivating that individual to alleviate others’ suffering. Compassion is ‘a relational process that involves noticing another person’s suffering, empathising with that person’s pain, and behaving in some way to reduce that pain’ by caring for them.⁹³

Similar descriptions of compassion have been presented for organisations more broadly. Thus, organisational compassion is viewed as a threefold relational process of collectively noticing another is suffering, empathising with their pain, and responding in some manner.⁹⁴ *Noticing* entails developing awareness of another’s emotional state possibly through openness to their emotional cues and knowledge of significant life events. *Empathy* relates to feeling another’s pain, while *responding* involves an effort to alleviate the other’s suffering condition. In the corporation, the board leaders must demonstrate compassion to their workers, who, in turn, will demonstrate compassion to their colleagues and customers or clients.⁹⁵

Compassion, through other-orientation and emotional connection with others, gives rise to thinking processes that might be regarded as necessary for undertaking successful social entrepreneurship. These processes include (1) increasing integrative thinking, (2) inducing pro-social judgments regarding the costs and benefits of social entrepreneurship, and (3) fostering commitment to alleviate others’ suffering. According to Miller et al, compassion contributes to an individual’s ability to process information in a more integrative fashion and, in turn, integrative thinking enables an individual to combine social and economic goals making social entrepreneurship possible. Economic and social value creation can be seen as mutually reinforcing rather than as mutually exclusive.⁹⁶ In addition, compassion is more likely to result in a more socially-oriented cost–benefit analysis that envisions a broader array of benefits than a rational cost–benefit analysis.⁹⁷ Madden et al suggest that ‘it seems likely that organisational capacity for compassion would heighten an organisation’s awareness to human suffering and pain outside the organisation as well’⁹⁸ and ‘we may see that

⁹² Ibid.

⁹³ Tae-Won Moon, Hur Won-Moo, Ko Sung-Hoon, Kim Jae-Woo, and Yoon Sung-Won Yoon *Bridging corporate social responsibility and compassion at work: Relations to organizational justice and affective organizational commitment* 19(1) Career Development International 49-72, at 52 (2014); J. M. Kanov., S. Maitlis, M. C. Worline,, J. E. Dutton, P. J. Frost,, and J. M. Lilius, *Compassion in organizational life* 47(6) American Behavioral Scientist, 808-827 (2004).

⁹⁴ J. E. Dutton, M. A. Glynn, and G. Spreitzer, *Positive organizational scholarship in The SAGE handbook of organizational behavior*, 1, 693-712 (2008).

⁹⁵ See also Lilius et al, above note 87.

⁹⁶ T. L. Miller, Matthew G. Grimes, Jeffery S. McMullen, and Timothy J. Vogus *Venturing For Others with Heart and Head: How Compassion Encourages Social Entrepreneurship* 37:4 Academy of Management Review 616-640, at 622-23 and 625 (2012).

⁹⁷ Ibid, at 626.

⁹⁸ Laura T. Madden,, Dennis Duchon, Timothy M. Madden and Donde Ashmos Plowman, *Emergent Organizational Capacity for Compassion* 37:4 Academy of Management Review 689-708, at 704 (2012).

organisations that value compassion are less likely to engage in purposely harming external stakeholder groups'.⁹⁹

Compassionate leadership has been linked to servant leadership behaviour in terms of empowerment, authenticity, stewardship and providing direction.¹⁰⁰ Servant-leadership, part of the conscious capitalism movement, can be distinguished from traditional conceptualisations of leadership that suggest 'a hierarchy of organisational priorities over human needs and a hierarchy of moral reasoning to be imposed on organisational members' and include 'hierarchies of gender, power, and hegemonic discourses that perpetuate gender performativity in the context of leadership in organisations'. Servant-leadership is recognised as 'non-hierarchical', and 'participative' and 'recognizes and values the subjectivity and situatedness of organizational members'.¹⁰¹ This conceptualisation of servant leadership carries with it defining features including empathy for others, authentic listening, nurturance, and caring.¹⁰² Reynolds highlights six key features: practicing stewardship, listening, empathising, healing, exercising commitment to the growth of people, and building community.¹⁰³ Reynolds sees in the servant-leadership concept the potential for 'a paradigm shift in leadership theory driven by a paradigm shift of gender values' that 'could move organisations from models of hierarchy-driven, rules-based models of dominance and authoritativeness to more holistic, value-driven, follower-oriented and participative models'¹⁰⁴ and the links with feminist theory become apparent.

(b) A feminist ethic of care as a guide

Rather than emphasise the hierarchical structure of a corporation, the feminist ethic of care approach allows us to see corporations as webs of relations among stakeholders – the us/them and internal/external distinctions change into a communal solidarity in which one sees the corporation as 'constituted by the network of relationships which it is involved in with the employees, customers, suppliers, communities, businesses and other groups who interact with and give meaning and definition to the corporation'.¹⁰⁵ The focus is consensus building and trust and communication¹⁰⁶ rather than commands from on high. Under the feminist ethic of care, the legal justification for the existence of the corporate form 'must be the advancement of the social good as well as the enhancement of corporate and individual

⁹⁹ Ibid.

¹⁰⁰ Dirk van Dierendonck, and Kathleen Patterson *Compassionate love as a cornerstone of servant leadership: An integration of previous theorizing and research* 128(1) Journal of Business Ethics 119-131 (2015).

¹⁰¹ Kae Reynolds, *Servant-Leadership – A Feminist Perspective* 10:6 International Journal of Servant Leadership, 35-63, at 57 (2015).

¹⁰² Reynolds, at 48, citing Oner (2009) 'Is Servant-Leadership gender bound in the political arena?' Paper presented at the annual meeting of the Midwest Political Science Association 67th Annual National Conference, Chicago, IL., at http://www.allacademic.com/meta/p364186_index.html.

¹⁰³ Reynolds, at 49.

¹⁰⁴ Reynolds, at 57.

¹⁰⁵ A. Wicks., D.A Gilbert, and R. Freeman, R., *A Feminist reinterpretation of the Stakeholder Concept* 4(4) Business Ethics Quarterly 475-497, at 483 (1994).

¹⁰⁶ B. K. Burton, and C. P. Dunn, *The caring approach and social issues in management education* 29 Journal of Management Education 453-474, at 457 (2005).

profit'.¹⁰⁷ A key feature of the ethic of care is its acknowledgement that all individuals are connected to others.¹⁰⁸ In this way, the ethic of care highlights the needs of particular others and commitment to dialogue as the principal means of moral deliberation.

Caring is a way of engaging in a particular goal – making our world better by caring about each other's needs – and engaging in a particular process – relying on empathic dispositions and practices to fulfil each other's needs. This can be adopted in a corporation under a feminist perspective which observes a corporation as a collective entity that is beyond the aggregation of individuals and so would recognise the qualities of caring and nurturing and would suggest a group of actors who operate collectively on the basis of responsibility, connection, ethics of care and sharing. This approach underlines an empathy with those who suffer and a desire to alleviate that suffering in a way that sits comfortably with the concept of compassion in organisational behaviour. Arguably, compassion demands a step further than empathy. In the courtroom setting, as Bandes tells us, 'empathy allows us to put ourselves in the shoes of others—it allows a judge to see the perspective of all the litigants. But compassion commands us to help.'¹⁰⁹

(c) A compassion model – the National Health Service

The NHS offers a model of compassion which could serve as a starting base to build upon in the corporate world. The Department of Health Consultation paper entitled *Developing the culture of compassionate care – creating a new vision for nurses, midwives and care-givers*¹¹⁰ highlights the values and behaviours that would demonstrate a successful culture of care and compassion: care, compassion, competence, communication, courage and commitment. Similarly, The Francis Report of 2012-13¹¹¹ concluded that there should be an increased focus on a culture of compassion and caring in nurse recruitment, training and education.

West describes the impact of compassion on relationships. According to West, there are four components of compassion:

'for me to be compassionate I first have to be present with you, I have to pay attention, I have to listen with fascination to you. Second, it's important that I arrive at an understanding of the causes of your distress. Third, I must empathise, I must feel at some level the feelings of distress that you have, which gives me, fourthly, the motivation then to help, to intervene to make a difference.... when NHS staff are able

¹⁰⁷ R. Cohen, *Feminist Thought and Corporate Law: It's Time to Find Our Way Up From the Bottom (Line)* 2(1) *Journal of Gender and the Law* 1, at 23 (1994).

¹⁰⁸ Joanne M. Liedtka, *Feminist Morality and Competitive Reality: A Role for an Ethic of Care?* 6:2 *Business Ethics Quarterly* 179-200, at 180 (1996).

¹⁰⁹ S. A. Bandes, *Compassion and the Rule of law* 13:2 *International Journal of Law in Context* 184-196, at 187 (2017).

¹¹⁰ Department of Health Consultation paper entitled *Developing the culture of compassionate care – creating a new vision for nurses, midwives and care-givers* (September 2012)

¹¹¹ Francis Report: *Report of the Mid Staffordshire NHS Foundation Trust Public Inquiry: executive summary* HC 947, Session 2012-2013

to deliver compassionate care, patients are more satisfied and that in turn affects staff commitment and wellbeing. We get a virtuous cycle of compassion.’¹¹²

These four components are similar to those theoretical compassion features identified above.

Importantly,

‘leaders play a particularly powerful role. What leaders pay attention to, what they monitor, what they reward, what they talk about, communicates to staff what it is that’s valued in the organisation, i.e. the culture.... Leaders who pay attention to staff, who as a consequence have an appreciation of their frustrations, their difficulties, their hurts, their challenges, their delights, their successes, leaders who arrive at an understanding of the causes of the distress of difficulties staff experience.’¹¹³

West is describing here relationships in which the ‘leaders’ of the organisation have an important role in making clear what are the important values that are then fed into the relationships throughout the organisation, between leaders and their workers and between workers and their customers or clients, or patients in West’s health provision context.

The NHS does not always achieve its compassionate goals. That may be because of external constraints such as lack of funding. In the Mid-Staffordshire Hospital Trust it was clear that achieving targets had become the focus at the expense of patient care and employee welfare.¹¹⁴ Thus the compassionate goals are inhibited by threat and fear, which occur as NHS services are time-pressured, accounts-driven, and job-threatening.¹¹⁵ The result then is inhibited compassion, negative impacts,¹¹⁶ with patient care compromised, nurses suffering common mental disorders,¹¹⁷ and even suicidal doctors.¹¹⁸ The message is to strive for the six C’s identified by the Department of Health’s Consultation, noted above: care, compassion, competence, communication, courage and commitment. Is it possible to achieve these in the corporate context, given the problems featured?

Part 4 Positive leaders: hints of compassion

Not all companies are run badly. Avenir identifies some CEOs as worthy of praise¹¹⁹: John Legere at T Mobile, Cheryl Bachelder at Popeyes Louisiana Kitchen, Inc., and Elon Musk at Tesla. Avenir identifies the openness and willingness to talk directly to employees of John

¹¹² M. West, *Collaborative and Compassionate Leadership*, The Kings Fund Leadership Summit, May 2017 at <https://www.kingsfund.org.uk/audio-video/michael-west-collaborative-compassionate-leadership>

¹¹³ Ibid.

¹¹⁴ See for an account of the problems C. Villiers, ‘Corporate Governance, Responsibility and Compassion: Why We Should Care’, in N. Boeger and C. Villiers (eds) *Shaping the Corporate Landscape: Towards Corporate Reform and Enterprise Diversity* 151-172 (Hart, 2018).

¹¹⁵ Several Doctors, Threats Cannot Make Healthcare Workers More Compassionate, Letter to The Guardian, 1 April 2013.

¹¹⁶ Ibid.

¹¹⁷ Work related stress, depression and anxiety are especially prevalent among nursing and midwifery professionals (2,640 cases per 100,000): HSE, above note 51, at 6.

¹¹⁸ Waters *et al*, 2016, above note 54.

¹¹⁹ Avenir, J. Marshall, *The 6 Best and Worst CEOs of 2017 and What You Can Learn from Them*, 7 September 2017 <https://www.avenir.com/blog/the-6-best-and-worse-ceos-of-2017-and-what-you-can-learn-from-them>

Legere as a positive trait. Thus, Legere seemingly ‘demanded that every time he spoke publicly to the company, all employees at every level of T-Mobile across the entire country would be invited to watch him speak.’ Legere accepts live interactive text and voice questions from any of T-Mobile’s 50K or so employees throughout these meetings. He gives every employee stock in the company and consistently lets them know he respects them as owner and partner. He habitually visits their 18 major call centers in the US and his advice to business school students: “Listen to your employees, listen to your customers, shut the f*** up, and do what they tell you.” We see here a leader who gives a voice to his employees and his customers as the experts on the product his company is making, either as experts in the production process or as expert users of the products. He displays a willingness to learn from their expertise.

Aventr describes Cheryl Bachelder as a model of servant leadership. As a CEO she managed to turn around a previously failing company. When she was appointed as CEO of Popeyes Louisiana Kitchen, Inc. in 2007 the company had a very negative culture. At the start of her tenure as CEO, sales had been trending downward and profits were in the negative. Popeyes had seen four CEOs leave in the seven years prior to Bachelder’s appointment. In 2007, the company’s stock price was \$13 a share, down from \$42 in 2002. During her ten-year stint, Bachelder and her team created a workplace where people were apparently ‘treated with respect and dignity, while being challenged to perform at their best.’ According to Aventr, self-interest was set aside in favour of collaboration and team play. Bachelder wanted to make the Popeye’s brand highly attractive for the customer experience, and equally, for the the employee experience. Aventr claims that she transformed the management team from a leader first model to a *servant leadership* model, while creating a collaborative company culture focused on building and maintaining relationships.

According to Aventr, the environment at SpaceX isn’t about comfort and ease; the company culture is mission driven. Everyone at the company believes they are responsible for ‘getting humans to Mars.’ Their ultimate goal is to help humanity become a multi-planetary species. They set aggressive, arguably unrealistic goals, yet the people of SpaceX keep getting the work done because their mindset is on the mission. The general working assumption at SpaceX is that everything is possible. The organisational structure is fairly flat when it comes to hierarchy and the generation of ideas. The best idea always wins, not just the idea of the most senior person in the room, or the highest-ranking personnel. Described as ‘awesome to work with’, Elon Musk is the 8th best rated CEO, with an approval rating of 98 percent of his company, according to Glassdoor reviews. Musk encourages his staff to tell him when he’s wrong. Aventr alleges that Musk has fostered an environment where it is safe to speak up and would rather his employees were more afraid to not speak up.

The performance of these companies has been strong. T-Mobile for example, T-Mobile has more than doubled earnings growth year-over-year despite slowing subscriber growth.¹²⁰

¹²⁰ M. Greve, *T-Mobile’s Strong Performance: Can It Continue? Seeking Alpha*, 5 September 2017, at <https://seekingalpha.com/article/4104286-t-mobiles-strong-performance-can-continue> See also T. Team, *Why We Remain Bullish on T-Mobile*, Forbes, 2 April, 2018, at

Popeye Louisiana Kitchens Inc. in 2016 delivered global same-store sales growth of 1.7 percent, an eighth consecutive year of positive same-store sales growth, and 216 new restaurant openings around the world.¹²¹ Tesla appears to be travelling a rockier path with financial challenges and share prices lagging. A change of name and delayed production are part of the problem.¹²² Interestingly also, commentators note that Elon Musk is making comparisons with Ford Motors, River Rouge production. Yet, that comparison is noted as problematic, given that River Rouge, as well as Ford's other famous plants, were built to those heights on the backs of workers who were often cajoled, harassed, and abused into making the factory operate as well as it did in those early days. Tesla operates the only non-union American-owned automotive factory in the country, and the company faces reports and allegations of mistreatment by its own former workers.¹²³ These observations seen as threats to the future success of the company.

In the UK a highly respected CEO is Paul Polman at Unilever, renowned for his engagement with sustainability and climate change issues. As Kuenkel observes: 'When people see the story behind a tense situation or difficult-to-understand behaviour, when they see the humanness in another person, they develop compassion that often leads to revolutionary change.'¹²⁴ Paul Polman, CEO of Unilever, admitted that his inspiration for his company's ten-year Sustainable Living Plan – itself a revolution in the way large companies work in the world – 'came from looking into his children's eyes and recognizing that he would be failing them if he did not do all he could to ensure their future wellbeing.'¹²⁵ Unilever has continued to perform well and most recently, it performed well in emerging markets.¹²⁶

The above descriptions indicate that those CEOs who acknowledge the expertise of their workers and seek their opinions as well as see themselves more as servant leaders are more likely to be successful. The connection they maintain with their workers is a crucial element and arguably one of the key ingredients for building a compassionate organisation since it is the connection that will enable leaders to reach the first few stages of the compassion process, that of noticing any suffering, of understanding the causes of any such suffering and feeling empathy that brings about a desire to ameliorate the suffering or take it away. Arguably, application of these leadership features becomes more feasible if enabled, rather

<https://www.forbes.com/sites/greatspeculations/2018/04/02/why-we-remain-bullish-on-t-mobile/#2e6c00c446d3>

¹²¹ QSR, Popeyes Reports 'Another Year of Strong Performance' 23 February 2017, at

<https://www.qsrmagazine.com/news/popeyes-reports-another-year-strong-performance>

¹²² J. Collins, Tesla's Weak Financials Are Finally Being Exposed In Its Stock Price, 27 March 2018, Forbes, at

<https://www.forbes.com/sites/jimcollins/2018/03/27/teslas-weak-financials-are-finally-being-exposed-in-its-stock-price/#589cf15375f2> See also B. Maurer, Tesla Q4: Financials Really Worsen, Seeking Alpha, 7 February 2018, at <https://seekingalpha.com/article/4144351-tesla-q4-financials-really-worsen>

¹²³ S. O'Kane, Tesla faces a critical year, but Elon Musk is obsessed with the future, The Verge, 8 February 2018, at <https://www.theverge.com/2018/2/8/16990730/tesla-earnings-2017-elon-musk>

¹²⁴ Petra Kuenkel, The Future of Humanity, 16 March 2017, at <http://petrakuenkel.com/2017/03/16/the-future-of-humanity/>

¹²⁵ Petra Kuenkel, *The Art of Leading Collectively, Co-creating a Sustainable, Socially Just Future*, (2016, Chelsea Green Publishing, Vermont), at 64-5.

¹²⁶ R. Sembhy, Unilever sales beat expectations thanks to strong performance in emerging markets, 1 February 2018, The Independent, at <https://www.independent.co.uk/news/business/news/unilever-marmite-dove-ben-jerrys-sales-profits-beat-expectations-strong-emerging-markets-performance-a8188691.html>

than hindered, by the corporate structures and processes. The legal apparatus could, in this respect, be an important supporting framework. Indeed, compassion is a concept that has attained recognition in some specific areas of law.

Part 5 (a) Compassion in Law

Whilst compassion might be regarded as a novel concept for corporate law or corporate governance, it is already well recognised in other areas of law. Feenan, for example, observes that compassion appears in sentencing, prisoner release, and in immigration law. It features especially in debates, policies, and litigation around assisted dying. It also appears in a wider range of laws such as housing, employment, and tort. Feenan notes that elsewhere, compassion appears in laws on legalisation of marijuana for medical use (California) and in the environmental protections of India's Constitution which refer to 'compassion for living creatures'.¹²⁷

Gearty shows us another area in which compassion has an important role. He highlights that human rights has compassionate instincts and that human rights oriented forms of communication provide a 'language of hospitality and of kindness and above all of compassion'.¹²⁸ Gearty makes a very bold claim that 'compassion is a universalistic disposition from which virtue flows and the linguistic medium through which it expresses itself in the contemporary world is the language of human rights'.¹²⁹ For Gearty, the challenge is to take compassion beyond 'individual acts of charity and the like, and thereby to get it to resemble the language of the oppressed, the down-trodden and the marginalised'.¹³⁰ This would resemble the 'true basis of human rights'.¹³¹ Gearty argues that human rights language asserts that we are all equal in view of our humanity and that our dignity, rooted in wonder at the brute fact of our achievement, demands that we each of us be given the chance to do the best we can, to thrive, to flourish, to do something with ourselves.¹³² Human rights epitomises the fundamental plea for 'kindliness, compassion and hospitality as well as the baser survival instincts of the (only ostensibly) fittest' in order for human beings to be able to flourish and progress.¹³³

Of course, compassion is not without its difficulties or controversies. Bandes, for example, prefers empathy over compassion in a legal setting because she sees a need for objectivity that a compassion-led would challenge. For Bandes, compassion might lead to taking sides and would be less predictable and open to personal whim. Bandes argues that compassion 'poses a challenge to overall fairness, notice, and consistency'¹³⁴ and that the invocation of

¹²⁷ D. Feenan, *Compassion in Law. What?!* SLSA Blog 14 April, 2017, at <http://slsablog.co.uk/blog/blog-posts/compassion-in-law-what/>. See also Feenan, D., 'Law and Compassion' (2017) 13:2 International Journal of Law in Context 121-142, at 132.

¹²⁸ Gearty, C., *Can Human Rights Survive?* 43 (CUP, 2006).

¹²⁹ *Ibid.*, at 44.

¹³⁰ *Ibid.*, at 48.

¹³¹ *Ibid.*, at 48.

¹³² *Ibid.*, at 49.

¹³³ *Ibid.*, at 41.

¹³⁴ S. Bandes, *Compassion and the Rule of Law* 13(2) International Journal of Law in Context, 184–196, at 184 (2017).

compassion to justify law reform is also troubling since it ‘implies that solutions to inequality and other injustices are a matter of charity and mercy, rather than a matter of correcting wrongs and expanding rights.’¹³⁵ A serious problem is also posed for the rule of law when compassion is used to make unauthorised exceptions to a rule. They then become arbitrary and dependent on the individual judge’s personality or mood. Nor does compassion necessarily guide us when dealing with competing claims. Hazel Biggs argues, however, that compassion makes for more realistic decision-making and that reason alone cannot be the only determinant of our actions.¹³⁶ In any event we would have to be mindful of the exercise of power that goes with compassion. Simpson, Clegg and Feeder also remind us that compassion must be seen as a social process with inherent power relations. The receiver may therefore experience manifestations of concern leading to actions of assessment and response as more or less positive or negative, more or less caring or manipulative.¹³⁷ Thus, compassion might not guarantee positive treatment or reception, but it does have the potential for improving the corporate culture.

As law has already made space for compassion and it can be seen as part of the essence of human rights law, this lays the ground for bringing it into company law. Indeed, as company law and corporate governance are identified as having contributed to the growing levels of exploitation and inequality, the case for introducing compassion and for seeking to face the challenges that Gearty has identified appear to be more compelling. Human rights law itself increasingly addresses corporations as well as states and it might be argued that Gearty’s approach to human rights could provide an appropriate guide for the corporate context where there are currently power imbalances and leaders exercising significant control without much accountability.

(b) Company Law and corporate governance

I have pointed out above the inequality, exploitation and environmental degradation towards which corporate processes have made their contribution. The corporate law and governance systems, being inadequate to prevent such negative social and environmental outcomes, must also share the blame since they have not prevented companies from promoting the financial objectives that created risks because of the pressure they place on employees within the organisational environment.¹³⁸ Crête suggests that it will be essential for a company’s management to include, among its priorities, clear and convincing objectives to ensure compliance with legal and ethical standards and that management will be called to implement effective mechanisms for detection and prevention to reflect a strong commitment to promote compliance, CSR and sustainability within the company.¹³⁹ For this to occur it will be necessary to provide a more effective company law and corporate governance framework that might more convincingly support a compassionate leadership and culture, and which

¹³⁵ Susan A. Bandes, *Compassion and the Rule of Law* 13(2) International Journal of Law in Context 184 (2017).

¹³⁶ H. Biggs, *From dispassionate law to compassionate outcomes in health-care law, or not*. 13(2) International Journal of Law in Context 172-183 (2017).

¹³⁷ A. V. Simpson, S. R. Clegg, and D. Freeder *Compassion, power and organization* 6(3) Journal of Political Power 385-404 (2013).

¹³⁸ Crête, 2016, at 30.

¹³⁹ Crête, at 31.

respects equality of humanity and dignity of all who participate in the corporation and contribute to its success.

Starting with the 'tone at the top', within the boardroom itself, greater diversity is necessary. Whilst there has been progress on this front, there is still much more work to be done, not just with regard to female directors but also to other minority groups, including BAME minorities and disabled workers. The strength and mix of the boardroom is a fundamental aspect of the company's culture. Similarly, the pay levels that we see currently in many of our largest companies might be regarded as inherently incompatible with a compassionate leadership style. Thus, smaller and more transparent pay ratios may be a further progressive development, necessary for bringing boardroom directors closer to their staff and strengthening their connections to each other. Such workers situated lower in the corporate pay scale might also require higher pay levels in order to enable them to avoid the suffering that goes with poverty.¹⁴⁰

A structural requirement that would help to build the connection between a boardroom and their staff across the company will be provision of more discursive opportunities and procedures with inclusive and flatter structures. Senior management must have regular dialogue with its staff and listen to their concerns and seek to understand them. This is essential for the first stage of compassion - noticing and being open to their staff's emotional cues.

With regard to external stakeholders such as the wider community a company law that requires financial resources being directed towards CSR issues may be a step in the right direction. The Indian Companies Act 2013 requires companies to devote 2% of their profits to be spent on CSR and CSR Committee.¹⁴¹ This might at least raise awareness of issues such as poverty or environmental degradation so that corporate leaders at least reach the first stage in the compassion process but it will require steps to ensure that companies understand and seek to resolve social problems such as poverty or pollution or exploitation.

All these suggestions could be built into the company law and corporate governance provisions and backed up by enforcement mechanisms. The current emphasis on shareholder primacy and wealth maximisation must be replaced by more responsible goals that are also more responsive to other people's sufferings. Corporations and their leaders have the resources and the capacity to alleviate or take away suffering but they will only do this with a compassionate culture in place that prioritises and supports objectives designed to build community and enable people to grow.

Conclusion

I have explored the toxic culture that has dominated the corporate landscape in the UK during the past few years. A culture of greed and self-interests has pervaded company boardrooms, with damaging social and environmental consequences and a lack of trust in the corporate

¹⁴⁰ Villiers, above note 38.

¹⁴¹ Section 135. See further Ekta Bahl, 'An overview of CSR Rules Under Companies Act 2013', Business Standard, 10 March 2014, at http://www.business-standard.com/article/companies/an-overview-of-csr-rules-under-companies-act-2013-114031000385_1.html

governance system. Widespread exploitation of workers is resulting in stark levels of inequality and increasing mental health problems. Efforts are under way to establish and develop new economic paradigms that address the needs of society and the environment. As part of these efforts this paper puts forward an argument for a more compassionate approach to corporate leadership. There are some examples already established that could offer guidance on how to build a compassionate organisation. Whilst claims have been made that this approach could result in more successful companies, my argument rests more on a moral argument for compassion that respects human equality and dignity. I also note the risks of subjectivity in applications of compassion.

Compassionate leaders require a supportive legal and regulatory framework to help them pursue their more pro-social goals and to enable them to be genuinely connected to their workers and their stakeholders. What is required are corporate governance and company laws that help boardrooms to see and to understand the implications of their corporate activities and that encourage them not only to offer empathy but also to seek to eradicate or alleviate the suffering they encounter. Ultimately, compassion includes those features of servant leadership that Reynold identifies: practicing stewardship, listening, empathising, healing, exercising commitment to the growth of people, and building community. Company law and corporate governance have the potential to help those leaders to achieve their aims.